

**Before the
Federal Communications Commission**

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)	
In the Matter of a)	
)	CSR-7947-Z
Motion Picture Association of America,)	
Inc.)	MB Docket 08-82
)	

Petition for Waiver of 47 C.F.R. §
76.1903

Comments of the American Association of People with Disabilities

The American Association of People with Disabilities (AAPD)¹ is pleased at the opportunity to provide a brief comment in regard to the Motion Picture Association of America (MPAA) Petition for Waiver of the Prohibition on the Use of Selectable Output Controls (47 C.F.R. § 76.1903) as referenced in the Federal Communications Commission (FCC) Public Notice DA 08-1081, released June 5, 2008 (the “Petition”).

AAPD advocates for accessibility and usability of all telecommunications devices and services so that persons with disabilities are not left out, left behind or otherwise excluded by technological barriers in products and services commonly used in everyday life.²

¹AAPD is the largest national independent nonprofit cross-disability member organization in the United States, dedicated to ensuring economic self-sufficiency and political empowerment for the more than 50 million Americans with disabilities. AAPD works in coalition with other disability organizations for the full implementation and enforcement of disability nondiscrimination laws, particularly the [Americans with Disabilities Act](#) (ADA) of 1990 and the Rehabilitation Act of 1973, and other statutory mandates for persons with disabilities.

² Specifically, the Board of Directors of AAPD passed June 14, 2006, a policy resolution as follows: Given that telecommunications and technology are fields that are rapidly changing, and this will impact the integration of persons with disabilities in all aspects of daily living, be it resolved that: with regard to telecommunications equipment and services, accessibility and usability are critical, and affordability is essential, for the full inclusion of persons with disabilities; and with regard to technology, barriers to usability and availability should be removed; all technologies should incorporate the concepts of accessibility and usability in design, development, production and dissemination, with the intention of making new technologies available to all persons regardless of disability.

Our understanding of the Petition is that MPAA is seeking to provide its members, who are producers and distributors of theatrical films (the “Petitioners”), with the opportunity to offer consumers the ability to order recently released high definition movies through arrangements with Multichannel Video Programming Distributors or MVPDs (the “Services”). Such movies are not currently made available for direct home viewing until after they have been released for sale on DVDs. Our further understanding is that the FCC currently has in place an encoding rule – referred to as the Selectable Output Control (SOC) prohibition – that impacts the provision of such movies through MVPDs. Further, our understanding is that the FCC appears to have indicated that the SOC prohibition was needed to promote the digital transition but also recognized that certain exceptions might be made to facilitate new business models that serve the public interest.

Petitioner asserts that a waiver of the SOC prohibition is necessary to provide these new Services which require secure digital outputs to reduce the risk of unauthorized copying, redistribution, or other activities which might damage DVD and other downstream markets.³

AAPD believes there are people with disabilities who may benefit greatly from an expanded range of audiovisual entertainment options available within the home and who may, therefore, benefit from an exception to the SOC prohibition.

AAPD takes no position with respect to the grant of the requested waiver, except as follows.

- (a) Any such waiver that may be granted by the FCC must ensure that the requirements for pass through of closed captioning and available video description are not adversely affected.
- (b) MVPD set-top box design and production for these Services must ensure maximum accessibility and usability by people with disabilities when using set-top box controls and any associated menus, navigation, and remote control systems.

Furthermore, in general we recommend caution to the FCC in regard to issuing permanent waivers; in this instance we suggest there be a review of the effects of any waiver, if it is granted, after a period of time, to review any impacts, and such impacts to address (a) and (b) above.

AAPD believes strongly that any new offerings by MVPDs, whether they are on-demand “channels,” pay-per-view or other means of display of

³ Petition at 3.

early release or theatrical films or movies, must conform to existing requirements for accessibility and usability by persons with disabilities, such as persons with hearing disabilities and persons with vision disabilities. Specifically we are referring to the regulations for closed captioning⁴ and decoder circuitry⁵ and requirements for cable carriage content insofar as these pertain to available video description.⁶

We note also that there have been problems with HDTV with respect to the transmission and display of closed captions. We do not want new Services to perpetuate such problems. For instance, we understand that the highest quality picture and sound from consumer electronic equipment is achieved when using either component or High Definition Media Interface (HDMI) connections between the display and video input devices. However, our understanding also is that these connection standards do not carry caption data. This is a major disappointment to deaf and hard-of-hearing purchasers of new high-end equipment and should be rectified before HDTV programming and equipment becomes more ubiquitous.

In light of the implications of the Petition – that recently released movies would be available as an MVPD Service – we find it poignant to note that while captions are provided on virtually all movie DVDs, very few movies shown in theaters today are shown with captions. We also find it poignant to note that Petitioners provide video description for even fewer general or wide release movies shown in movie theaters or distributed on DVDs. As such, it would be a compounded injustice if captioning and video description are unavailable when such movies are distributed by an MVPD.

At a minimum, AAPD seeks a firm commitment by Petitioners to work with their prospective MVPD partners and manufacturers of set-top boxes and HDTV equipment to ensure greater provision of, and the pass through and display of, captions and video description.

⁴ Sections 711 and 713 of the Act, 47 CFR Parts 79.1 and 79.2.

⁵ Sections 303(u) and 330(b) of the Act, 47 CFR 15.119 and 15.122.

⁶ The 1995 Cable Carriage provide for proper carriage of video description via cable as well as broadcast media. From 1995 Cable rules: (g) Conditions of carriage. Content to be carried. A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator.

AAPD supports grant of a limited waiver of the SOC prohibition for the purpose described in the Petition if accessibility safeguards for consumers with disabilities are incorporated at the outset. We believe that a grant of such a waiver will serve the public interest as these new Services would expand consumer choice by improving the timeliness and quality of home movie viewing by people with disabilities if our recommendations are incorporated in the waiver.

Sincerely,

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